

1 **ARTICLE 265**

2 **Nursing Home Administrators**

3 **12-265-101. [Formerly 12-39-101] Legislative declaration.** The
4 general assembly declares that the intent of this article **265** is to provide
5 a measure of protection to the residents of nursing homes in this state who
6 are aged or who have disabilities by establishing a means to regulate
7 nursing home administrators to ensure quality administration and sound
8 management of nursing homes. It is also the intent of the general
9 assembly that the board of examiners of nursing home administrators be
10 adequately funded to carry out the duties and functions specified by this
11 article **265** as well as the legislative intent expressed in this section.

12 **12-265-102. Applicability of common provisions.** ARTICLES 1,
13 20, AND 30 OF THIS TITLE 12 APPLY, ACCORDING TO THEIR TERMS, TO THIS
14 ARTICLE 265.

15 **12-265-103. [Formerly 12-39-102] Definitions.** As used in this
16 article **265**, unless the context otherwise requires:

17 (1) "Board" means the board of examiners of nursing home
18 administrators CREATED IN SECTION 12-265-106.

19 (2) "Nursing home administrator" means any individual licensed
20 and responsible for planning, organizing, directing, and controlling the
21 operation of a nursing home or who in fact performs ~~such~~ THESE
22 functions, whether or not ~~such~~ THESE functions are shared by one or more
23 other persons.

24 (3) "Nursing home administrator-in-training" means an individual
25 registered with the board pursuant to the provisions of this article **265**.

26 (4) "Nursing home facility" shall have the same meaning as that
27 set forth in section 25-1-1002, ~~C.R.S.~~, and shall include nursing care

1 facilities, whether proprietary or nonprofit, ~~which~~ THAT are licensed
2 under section 25-1.5-103 (1)(a)(I), ~~C.R.S.~~, or pursuant to the rules for
3 nursing homes promulgated by the department of public health and
4 environment. The term "nursing home" includes but is not limited to
5 nursing homes owned or administered by the state government or any
6 agency or political subdivision thereof.

7 (5) "Practice of nursing home administration" means the planning,
8 organizing, directing, and control of the operation of a nursing home.

9 (6) "Reasonable grounds" means facts and circumstances
10 sufficiently strong to warrant a prudent person to believe that the facts
11 and circumstances are true.

12 **12-265-104. [Formerly 12-39-103] Administrator license**
13 **required.** No person shall practice or offer to practice nursing home
14 administration in this state or use any title, sign, card, or device to
15 indicate that ~~such~~ THE person is a nursing home administrator, unless ~~such~~
16 THE person has been duly licensed as a nursing home administrator as
17 required by this article **265**.

18 **12-265-105. [Formerly 12-39-103.5] State training school.** The
19 nursing home administrator in each of the three state home and training
20 schools at Grand Junction, Pueblo, and Wheat Ridge is not required to be
21 the superintendent of ~~such~~ THE facility.

22 **12-265-106. Board of examiners of nursing home**
23 **administrators - creation - subject to termination.** (1) [Formerly
24 **12-39-104 (1)]** (a) The board of examiners of nursing home
25 administrators is hereby created in the division. ~~of professions and~~
26 ~~occupations in the department of regulatory agencies.~~ The board is
27 composed of the following members appointed by the governor:

1 (I) Three members who are practicing nursing home
2 administrators duly licensed under this article **265**, at least one of whom
3 shall be from nonprofit facility administration; AND

4 ~~(H) Repealed.~~

5 ~~(HH) (II) Three members shall be representative of the public at~~
6 ~~large; except that upon the expiration of the term of office of the one~~
7 ~~member of the board representing the public whose term expires on July~~
8 ~~1, 2011, the board shall consist of Two members representative of the~~
9 public at large.

10 (b) No more than three of the members of the board shall be
11 officials or full-time employees of state government or local
12 governments. The term of office for each member of the board shall be
13 four years. No member of the board shall serve more than two
14 consecutive terms. All the members of the board shall be residents of this
15 state.

16 ~~(+)~~ (2) **[Formerly 12-39-104.5]** (a) A nursing home administrator
17 is qualified to be appointed to the board if the person:

18 ~~(a)~~ (I) Is a legal resident of Colorado;

19 ~~(b)~~ (II) Is currently licensed as a nursing home administrator; and

20 ~~(c)~~ (III) Has been actively engaged as a licensed nursing home
21 administrator for at least three years.

22 ~~(2)~~ (b) Notwithstanding subsection ~~(+)~~ **(2)(a)** of this section, a
23 person convicted of a felony in Colorado or any other state or of violating
24 this article **265** or any law governing the practice of nursing home
25 administrators shall not be appointed to or serve on the board.

26 (3) **[Formerly 12-39-104 (2)]** (a) The governor shall make
27 appointments to the board. In making an appointment to fill a vacancy on

1 the board in the position of, or to fill the remainder of an unexpired term
2 for, a nursing home administrator who is from nonprofit facility
3 administration, as required by ~~subparagraph (f) of paragraph (a) of~~
4 ~~subsection (1)~~ SUBSECTION (1)(a)(I) of this section, if the governor, after
5 a good-faith attempt, is unable to find a nursing home administrator
6 candidate who comes from nonprofit facility administration to fill the
7 vacancy or complete the unexpired term, the governor may appoint any
8 qualified nursing home administrator to complete the unexpired term or
9 fill the vacancy in that board position. If the appointment is to fill a
10 vacancy, the board member may serve the full term and is eligible for
11 appointment for a second term.

12 (b) The governor may remove any board member for negligence,
13 incompetency, unprofessional conduct, or willful misconduct. Actions
14 constituting neglect of duty include but are not limited to three unexcused
15 absences from scheduled meetings in any one calendar year. The
16 governor shall fill a vacancy in the membership of the board for the
17 remainder of the unexpired term. A member who is a practicing nursing
18 home administrator or long-term care professional shall serve for a full
19 term only if, during ~~such~~ THE term, ~~such~~ THE member is actively
20 employed as a practicing member of his or her profession without a lapse
21 of employment greater than one hundred twenty days.

22 (4) **[Formerly 12-39-104 (3)]** The board shall elect annually from
23 its membership a chair and vice-chair. The board shall hold two or more
24 meetings each year. At any meeting a majority shall constitute a quorum.

25 (5) **[Formerly 12-39-104 (4)]** The board shall exercise its powers
26 and perform its duties and functions specified by this article **265** under the
27 department, ~~of regulatory agencies and~~ the executive director, ~~thereof and~~

1 the division of ~~professions and occupations~~ as if the same were
2 transferred to the department by a **type 1** transfer, as such transfer is
3 defined in the "Administrative Organization Act of 1968", article 1 of title
4 24, C.R.S.

5 (6) **[Formerly 12-39-104 (5)]** The director ~~of the division of~~
6 ~~professions and occupations in the department of regulatory agencies~~ may
7 appoint, subject to section 13 of article XII of the state constitution, a
8 program director ~~to~~ FOR the board. The program director shall not be a
9 member of the board, but shall have ~~such~~ THE powers and shall perform
10 ~~such~~ THE duties ~~as are~~ prescribed by law and the rules of the board.
11 Additional staff may be appointed by the director ~~of the division of~~
12 ~~professions and occupations~~ to adequately assist the board and the
13 program director in keeping records and in the performance of their
14 duties. These employees, if any, shall be appointed and serve in
15 accordance with section 13 of article XII of the state constitution.

16 **12-265-107. Powers and duties of the board - rules.**

17 (1) **[Formerly 12-39-105 (1)]** ~~(a)~~ The board has the following powers
18 and duties:

19 ~~(I) (A)~~ (a) (I) To adopt rules defining standards of nursing home
20 administration, including the responsibilities and duties of nursing home
21 administrators, consistent with this article **265**. The standards established
22 in the rules shall be met by individuals in order to receive and retain a
23 license and shall be designed to ensure that nursing home administrators
24 are qualified by education and training in the appropriate field to serve as
25 nursing home administrators.

26 ~~(B)~~ (II) To develop and apply appropriate techniques, including
27 examinations and investigations, for determining whether an individual

1 meets ~~such~~ THE standards;

2 ~~(H)-(b)~~ To issue licenses to individuals determined, after
3 application of ~~such~~ THE techniques, to meet ~~such~~ THE standards specified
4 in ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION (1)(a) OF THIS
5 SECTION;

6 ~~(HH) (c)~~ To ~~revoke, suspend, withhold, or refuse to renew any~~
7 ~~license previously issued by the board, to~~ TAKE DISCIPLINARY ACTION
8 AGAINST A LICENSEE IN ACCORDANCE WITH SECTION 12-20-404 OR place
9 a licensee or temporary license holder on probation ~~or to issue a letter of~~
10 ~~admonition to a licensee in accordance with section 12-39-111 (3)~~ in any
11 case where the individual holding any such license is determined to have
12 failed to conform to the standards developed pursuant to ~~subparagraph (I)~~
13 ~~of this paragraph (a)~~ SUBSECTION (1)(a) OF THIS SECTION or to have
14 committed an act that constitutes grounds for discipline as set forth in
15 section ~~12-39-111~~ **12-265-113**;

16 ~~(IV)~~ (d) To establish and carry out procedures designed to ensure
17 that individuals licensed as nursing home administrators will, during any
18 period that they serve as such, comply with the requirements of ~~such~~ THE
19 standards specified in ~~subparagraph (I) of this paragraph (a)~~ SUBSECTION
20 (1)(a) OF THIS SECTION.

21 ~~(V)~~ (e) (I) To conduct investigations, hold hearings, and take
22 evidence in ~~all matters relating to the exercise and performance of the~~
23 ~~powers and duties vested in the board and, in connection with any~~
24 ~~investigation following the filing of a signed complaint, an investigation~~
25 ~~initiated by the board, or any hearing, to administer oaths and issue~~
26 ~~subpoenas compelling the attendance and testimony of witnesses and the~~
27 ~~production of books, papers, or records relevant to an investigation or~~

1 ~~hearing~~ ACCORDANCE WITH SECTION 12-20-403;

2 ~~(VI) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p.~~

3 ~~1023, § 6, effective May 4, 2009.)~~

4 ~~(b) The board or an administrative law judge shall have the power~~

5 ~~to administer oaths, take affirmations of witnesses, and issue subpoenas~~

6 ~~to compel the attendance of witnesses and the production of all relevant~~

7 ~~papers, books, records, documentary evidence, and materials in any~~

8 ~~hearing, investigation, accusation, or other matter coming before the~~

9 ~~board. The board may appoint an administrative law judge pursuant to~~

10 ~~part 10 of article 30 of title 24, C.R.S., to take evidence and to make~~

11 ~~findings and report them to the board.~~

12 ~~(II) The~~ A person providing documents SUBPOENAED PURSUANT

13 TO SECTION 12-20-403 (2) shall prepare them from the original record and

14 shall delete from the copy provided pursuant to the subpoena the name of

15 the resident, but shall identify the resident by a numbered code, to be

16 retained by the custodian of the records from which the copies were

17 made. Upon certification of the custodian that the copies are true and

18 complete except for the resident's name, they shall be deemed authentic,

19 subject to the right to inspect the originals for the limited purpose of

20 ascertaining the accuracy of the copies. No privilege of confidentiality

21 shall exist with respect to the copies, and no liability shall lie against the

22 board, the custodian, or the custodian's authorized employee for

23 furnishing or using the copies in accordance with this subsection (1).

24 ~~(c) Upon failure of any witness to comply with such subpoena or~~

25 ~~process, the district court of the county in which the subpoenaed person~~

26 ~~or licensee resides or conducts business, upon application by the board or~~

27 ~~director with notice to the subpoenaed person or licensee, may issue to the~~

1 ~~person or licensee an order requiring that person or licensee to appear~~
2 ~~before the board or director; to produce the relevant papers, books,~~
3 ~~records, documentary evidence, or materials if so ordered; or to give~~
4 ~~evidence touching the matter under investigation or in question. Failure~~
5 ~~to obey the order of the court may be punished by the court as a contempt~~
6 ~~of court.~~

7 (2) [Formerly 12-39-105 (3)] (a) The board shall develop rules,
8 with input from long-term care facility provider associations, the
9 department of public health and environment, the office of the state
10 attorney general, and consumer representatives, concerning factors to be
11 considered in determining performance that fails to meet generally
12 accepted standards for nursing home administrators and whether or not
13 remedial or disciplinary actions are warranted. The board may create an
14 advisory committee to assist the board in developing standards that
15 describe the responsibilities and duties of nursing home administrators.

16 (b) If after an investigation the board determines that there are
17 reasonable grounds to believe that the performance of a licensed
18 administrator is inconsistent with the health or safety of residents in the
19 care of the facility in which the administrator works and is contrary to
20 standards adopted by the board, the board may initiate disciplinary action
21 as may be warranted.

22 (3) [Formerly 12-39-105 (4)] The board shall have the authority
23 to make rules ~~consistent with law as may be necessary for the proper~~
24 ~~performance of its duties~~ PURSUANT TO SECTION 12-20-204 and to take
25 such other actions as may be necessary to enable the state to meet the
26 requirements set forth in section 1908 of the federal "Social Security
27 Act", the federal ~~rules~~ REGULATIONS promulgated thereunder, and other

1 pertinent federal requirements.

2 (4) **[Formerly 12-39-107.5]** The board shall promulgate rules
3 defining the criteria for the education and experience necessary for
4 admittance to the administrator-in-training program. The board shall
5 furnish copies of the appropriate rules to members of the public upon
6 request. ~~Such~~ THE criteria for the education and experience necessary for
7 admittance to the administrator-in-training program shall not exceed
8 successful completion of two years of college level study in an accredited
9 institution of higher education in areas relating to health care or two years
10 of board approved experience in nursing home administration or
11 comparable health management experience for each year of required
12 education.

13 **12-265-108. [Formerly 12-39-106] Qualifications for admission**
14 **to examination.** (1) The board shall admit to examination for licensure
15 as a nursing home administrator any applicant who pays a fee as
16 determined by the board, ~~who~~ submits evidence of suitability prescribed
17 by the board, ~~who~~ is twenty-one years of age or older, and ~~who~~ provides
18 written documentation that the applicant meets one of the following
19 requirements:

20 (a) The applicant has successfully completed the
21 administrator-in-training program pursuant to section ~~12-39-107~~
22 **12-265-109**; or

23 (b) The applicant has successfully completed a bachelor's degree
24 or higher degree in public health administration or health administration,
25 a master's degree in management or business administration, or any
26 degree or degrees deemed appropriate by the board; or

27 (c) (I) The applicant has successfully completed an associate's

1 degree or higher degree in a health care-related field or a bachelor's
2 degree in business or public administration and has a minimum of one
3 year of experience in administration in a nursing home or hospital. For the
4 purposes of this section, a registered nurse who is a graduate of a
5 three-year diploma program meets the associate degree requirement.

6 (II) For purposes of the experience required by this ~~paragraph (c)~~
7 SUBSECTION (1)(c), an applicant must have day-to-day, on-site
8 responsibility for supervising, directing, managing, monitoring, or
9 exercising reasonable control over subordinates for one year.

10 (2) If the applicant fails to provide evidence satisfactory to the
11 board that the applicant meets the requirements of subsection (1) of this
12 section, the applicant shall not be admitted to take the licensing
13 examination, and the applicant shall not be entitled to or be granted a
14 license as a nursing home administrator.

15 ~~(3) (Deleted by amendment, L. 99, p. 361, § 4, effective July 1,~~
16 ~~1999.)~~

17 **12-265-109. [Formerly 12-39-107] Administrator-in-training**
18 **- rules.** (1) The board may grant admission into the nursing home
19 administrator-in-training program to an applicant for a nursing home
20 administrator's license who meets the board's criteria for education and
21 experience, pursuant to section ~~12-39-107.5~~ **12-265-107 (4)**. Upon
22 successful completion of the one-thousand-hour training period, the
23 applicant is eligible to take the examination.

24 ~~(2) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p.~~
25 ~~1024, § 8, effective May 4, 2009.)~~

26 ~~(3)~~ (2) Every nursing home administrator-in-training shall register
27 the fact of ~~such~~ THE training with the board in accordance with the rules

1 and on forms provided by the board.

2 (4) (3) The board shall, by rule, establish a monitoring mechanism
3 that will provide oversight of the administrator-in-training program,
4 including a requirement that an administrator-in-training submit periodic
5 progress reports to the board.

6 (5) ~~(Deleted by amendment, L. 99, p. 362, § 5, effective July 1,~~
7 ~~1999.)~~

8 (6) (4) The board may waive any portion required by subsection
9 (1) of this section if it finds that the applicant has prior experience or
10 training sufficient to satisfy requirements established by rule of the board.

11

12 **12-265-110. [Formerly 12-39-108] Licenses - temporary**
13 **licenses - renewal - fees - rules.** (1) Any license issued by the board
14 ~~shall be valid for a period determined pursuant to a schedule established~~
15 ~~by the director of the division of professions and occupations within the~~
16 ~~department of regulatory agencies and shall be renewed or reinstated~~
17 ~~pursuant to section 24-34-102 (8), C.R.S. The director of the division of~~
18 ~~professions and occupations within the department of regulatory agencies~~
19 ~~may establish renewal fees and delinquency fees for reinstatement~~
20 ~~pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her~~
21 ~~license pursuant to the schedule established by the director of the division~~
22 ~~of professions and occupations, such license shall expire~~ PURSUANT TO
23 THIS ARTICLE 265 IS SUBJECT TO THE RENEWAL, EXPIRATION,
24 REINSTATEMENT, AND DELINQUENCY FEE PROVISIONS SPECIFIED IN
25 SECTION 12-20-202 (1) AND (2). Any person whose license has expired
26 shall be subject to the penalties provided in this article **265** or section
27 ~~24-34-102 (8), C.R.S.~~ **12-20-202 (1).**

1 ~~(2) Repealed.~~

2 ~~(3)~~ (2) Only an individual who has qualified as a licensed nursing
3 home administrator under the provisions of this article **265** and who holds
4 a valid current license pursuant to the provisions of this section has the
5 privilege of using the title "nursing home administrator" and the right and
6 the privilege of using the abbreviation "N.H.A." after ~~such~~ THE person's
7 name.

8 ~~(4)~~ (3) The board shall maintain a list of all licensed nursing home
9 administrators, which list shall show: the place of residence, the name and
10 age of each licensee, any action taken by the board, the number of the
11 license issued to the licensee, and such other pertinent information as the
12 board may deem necessary. The department shall keep a list of applicants
13 who are denied.

14 ~~(5)~~ (4) The board may issue a temporary license to an applicant
15 for a period not to exceed six months. The board shall promulgate rules
16 ~~and regulations~~ for the issuance of ~~such~~ a temporary license.

17 ~~(6)~~ (5) A temporary license shall be granted to an applicant who
18 is employed as a hospital administrator by a general hospital licensed or
19 certified by the department of public health and environment. ~~Such~~ THE
20 temporary ~~permit~~ LICENSE shall be granted for a period not to exceed
21 twelve months and shall be void at such time the license holder is no
22 longer employed by the general hospital.

23 ~~(7)~~ (6) The board shall establish, pursuant to section ~~24-34-105,~~
24 ~~Č.R.S. 12-20-105,~~ and publish annually a schedule of fees for the
25 licensing of nursing home administrators.

26 ~~(8) All moneys collected or received by the board shall be~~
27 ~~transmitted to the state treasurer who shall credit the same as provided in~~

1 ~~section 24-34-105, C.R.S., and the general assembly shall make annual~~
2 ~~appropriations pursuant to said section for the expenditures of the board~~
3 ~~incurred in the performance of its duties under this article, which~~
4 ~~expenditures shall be made from such appropriations upon vouchers and~~
5 ~~warrants drawn pursuant to law.~~

6 ~~(9) No nursing home administrator who has had a license revoked~~
7 ~~may apply for licensure before a one-year waiting period following the~~
8 ~~date of such revocation and must comply with all requirements~~
9 ~~established by rules and regulations of the board.~~

10 ~~(10)~~ (7) Each licensee shall, within thirty days, notify the board of
11 any conviction of a felony or the acceptance of a guilty plea or a plea of
12 nolo contendere to a felony.

13 **12-265-111. [Formerly 12-39-109] Examinations.** (1) The board
14 shall determine the subjects of the state examination for all applicants for
15 licensure as nursing home administrators.

16 (2) Examinations shall be held at least semiannually at such times
17 and places as the board shall designate. Any examination shall be
18 prepared or approved by the board.

19 (3) The board shall have the authority to select and administer a
20 national examination.

21 **12-265-112. [Formerly 12-39-110] Endorsement - definitions.**

22 (1) (a) The board shall issue a license to any person duly licensed to
23 practice nursing home administration in another state or territory of the
24 United States who:

25 (I) Provides written documentation verifying that the applicant has
26 passed a national examination administered by a nationally recognized
27 testing entity for nursing home administrators and has passed an

1 examination in another state; and

2 (II) Successfully completes the Colorado state examination
3 provided in section ~~12-39-109~~ **12-265-111**.

4 (b) For purposes of this section, "state or territory" includes the
5 District of Columbia and the commonwealth of Puerto Rico.

6 (2) An applicant for licensure under this section shall submit to
7 the board, in a manner prescribed by the board, all of the following:

8 (a) Evidence that the applicant holds a current, active license to
9 practice nursing home administration issued by a state or territory of the
10 United States other than Colorado. ~~Such~~ THE evidence shall include a
11 license history from the state or territory that issued the license, indicating
12 whether any disciplinary or other adverse actions are currently pending
13 or have ever been taken in connection with that license and the final
14 disposition of ~~such~~ THESE actions, if any. If an applicant is or has been
15 licensed in more than one state or territory other than Colorado, the
16 applicant shall submit a license history or similar record as described in
17 this ~~paragraph (a)~~ SUBSECTION (2)(a) from each such state or territory.

18 (b) A license history or similar record, as described in ~~paragraph~~
19 ~~(a) of this subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION, relating to
20 any license or registration ~~which~~ THAT the applicant holds or has held in
21 any other health care occupation in any state or territory other than
22 Colorado. For purposes of this section, "health care occupation" includes
23 without limitation the practices of medicine, dentistry, psychiatry,
24 psychology, nursing, physical therapy, gerontology, chiropractic, podiatry,
25 midwifery, optometry, pharmacy, and any other practice in which
26 individuals are treated for medical or psychological problems or
27 conditions, as well as the rendition of any service supportive to or

1 ancillary to those practices.

2 (c) (I) Verification that the applicant has been engaged in the
3 practice of nursing home administration, has taught in a health care
4 administration program, or has served as a member of a nursing home
5 survey or accreditation team for one year immediately preceding the date
6 of the receipt of the application, or has been engaged in one of the
7 services described in this ~~subparagraph (I)~~ SUBSECTION (2)(c)(I) for three
8 of the five years immediately preceding the date of the receipt of the
9 application; or

10 (II) Evidence that the applicant has demonstrated competency as
11 a nursing home administrator as determined by the board.

12 **12-265-113. [Formerly 12-39-111] Grounds for discipline.**

13 (1) The board has the power to ~~revoke, suspend, withhold, or refuse to~~
14 ~~renew any license, to place on probation a licensee or temporary license~~
15 ~~holder, or to issue a letter of admonition to a licensee in accordance with~~
16 ~~the procedures set forth in subsection (3) of this section,~~ TAKE
17 DISCIPLINARY OR OTHER ACTION AS SPECIFIED IN SECTION 12-20-404 AND
18 12-265-107 (1)(c), upon proof that the person:

19 (a) Has procured or attempted to procure a license by fraud,
20 deceit, misrepresentation, misleading omission, or material misstatement
21 of fact;

22 (b) Has been convicted of a felony or pled guilty or nolo
23 contendere to a felony. A certified copy of the judgment of conviction by
24 a court of competent jurisdiction shall be prima facie evidence of ~~such~~
25 THE conviction. In considering a possible revocation, suspension, or
26 nonrenewal of a license or temporary license, the board shall be governed
27 by the provisions of ~~section~~ SECTIONS 24-5-101, ~~C.R.S.~~ AND 12-20-202

1 (5).

2 (c) Has had a license to practice nursing home administration or
3 any other health care occupation suspended or revoked in any jurisdiction.

4 A certified copy of the order of suspension or revocation shall be prima
5 facie evidence of ~~such~~ THE suspension or revocation.

6 (d) Has violated or aided or abetted a violation of any provision
7 of this article **265**, any rule ~~or regulation~~ adopted under this article **265**,
8 or any lawful order of the board;

9 (e) Has committed or engaged in any act or omission ~~which~~ THAT
10 fails to meet generally accepted standards for ~~such~~ nursing home
11 administration practice or licensure;

12 (f) Has falsified or made incorrect entries or failed to make
13 essential entries on resident records;

14 (g) Has an alcohol use disorder, as defined in section 27-81-102,
15 or a substance use disorder, as defined in section 27-82-102, abuses or
16 engages in the habitual or excessive use of any such habit-forming drug
17 or any controlled substance as defined in section 18-18-102 (5), or
18 participates in the unlawful use of controlled substances as specified in
19 section 18-18-404; except that the board has the discretion not to
20 discipline the licensee if ~~such~~ THE person is participating, in good faith,
21 in a substance use disorder treatment program approved by the board;

22 (h) Has a physical disability or an intellectual and developmental
23 disability that renders the licensee unable to practice nursing home
24 administration with reasonable skill and safety to the residents and that
25 may endanger the health or safety of persons under the licensee's care;

26 (i) Has violated the confidentiality of information or knowledge
27 as prescribed by law concerning any resident;

1 (j) Has violated section 18-13-119 ~~C.R.S.~~, concerning the abuse
2 of health insurance;

3 (k) Has failed to post in the nursing home facility in a conspicuous
4 place and in clearly legible type a notice giving the address and telephone
5 number of the board and stating that complaints may be made to the
6 board;

7 (l) Has practiced as a nursing home administrator without a
8 license;

9 (m) Has used in connection with the person's name any
10 designations tending to imply that the person is a licensed nursing home
11 administrator, unless the person in fact holds a valid license;

12 (n) Has practiced as a nursing home administrator during a period
13 when the person's license has been suspended or revoked; or

14 (o) Has sold, fraudulently obtained, or furnished a license to
15 practice as a nursing home administrator, or has aided or abetted therein.

16 (2) The board need not find that the actions ~~which~~ THAT are
17 grounds for discipline were willful or negligent, but it may consider the
18 same in determining the nature of disciplinary sanctions to be imposed.

19 (3) ~~(a) When a complaint or investigation discloses an instance of~~
20 ~~misconduct that, in the opinion of the board, does not warrant formal~~
21 ~~action by the board but that should not be dismissed as being without~~
22 ~~merit, THE BOARD MAY SEND a letter of admonition may be issued and~~
23 ~~sent, by certified mail to the A licensee UNDER THE CIRCUMSTANCES~~
24 ~~SPECIFIED IN AND IN ACCORDANCE WITH SECTION 12-40-404 (4).~~

25 ~~(b) When a letter of admonition is sent by the board, by certified~~
26 ~~mail, to a licensee, such licensee shall be advised that he or she has the~~
27 ~~right to request in writing, within twenty days after receipt of the letter,~~

1 ~~that formal disciplinary proceedings be initiated to adjudicate the~~
2 ~~propriety of the conduct upon which the letter of admonition is based.~~

3 ~~(c) If the request for adjudication is timely made, the letter of~~
4 ~~admonition shall be deemed vacated and the matter shall be processed by~~
5 ~~means of formal disciplinary proceedings.~~

6 (4) If the board finds the charges proven and orders that discipline
7 be imposed, it may also require the licensee to participate in a treatment
8 program or course of training or education as a requirement for
9 reinstatement as may be needed to correct any deficiency found in the
10 hearing.

11 ~~(5) When a complaint or an investigation discloses an instance of~~
12 ~~misconduct that, in the opinion of the board, warrants formal action, the~~
13 ~~complaint shall not be resolved by a deferred settlement, action,~~
14 ~~judgment, or prosecution.~~

15 **12-265-114. [Formerly 12-39-112] Withholding or denial of**
16 **license - hearing.** The board has the authority, pursuant to article 4 of
17 title 24, ~~C.R.S.~~, to determine whether an applicant for a license or a
18 temporary license to practice as a nursing home administrator possesses
19 the qualifications required by this article **265**, or whether there are
20 reasonable grounds to believe that ~~such~~ THE applicant has done any of the
21 acts set forth in section ~~12-39-111~~ **12-265-113** as grounds for discipline.
22 As used in this section, "applicant" does not include a person seeking the
23 renewal of a license.

24 **12-265-115. [Formerly 12-39-113] Mental and physical**
25 **examination of licensees.** (1) (a) If the board has reasonable grounds to
26 believe that a licensee or temporary license holder is unable to practice
27 with reasonable skill and safety to residents because of a condition

1 described in section ~~12-39-111 (1)(g) or (1)(h)~~ **12-265-113 (1)(g) OR**
2 **(1)(h)**, it may require the person to submit to a mental or physical
3 examination by a physician or other licensed health care professional it
4 designates. Upon the failure of the person to submit to the mental or
5 physical examination, unless due to circumstances beyond the person's
6 control, the board may suspend the person's license until the person
7 submits to the required examinations.

8 (b) Every licensee or temporary license holder, by engaging in the
9 practice of nursing home administration in this state or by applying for the
10 renewal of a license or temporary license, shall be deemed to have given
11 consent to submit to a mental or physical examination when so directed
12 in writing by the board. The direction to submit to ~~such~~ an examination
13 shall contain the basis of the board's reasonable grounds to believe that
14 the licensee is unable to practice with reasonable skill and safety to
15 residents because of a condition described in section ~~12-39-111 (1)(g) or~~
16 ~~(1)(h)~~ **12-265-113 (1)(g) OR (1)(h)**. The licensee shall be deemed to have
17 waived all objections to the admissibility of the examining physician's or
18 other licensed health care professional's testimony or examination reports
19 on the ground of privileged communication.

20 (2) Nothing in this section shall prevent the licensee from
21 submitting testimony or examination reports of a physician or other
22 licensed health care professional designated by the licensee that pertains
23 to a condition described in section ~~12-39-111 (1)(g) or (1)(h)~~ **12-265-113**
24 **(1)(g) OR (1)(h)** that may be considered by the board in conjunction with,
25 but not in lieu of, testimony and examination reports of the physician or
26 other licensed health care professional designated by the board.

27 (3) The results of any mental or physical examination ordered by

1 the board shall not be used as evidence in any proceeding other than one
2 before the board and shall not be deemed public records nor made
3 available to the public.

4 **12-265-116. [Formerly 12-39-114] Disciplinary proceedings -**
5 **administrative law judge - judicial review - publicly recorded votes.**

6 ~~(1) The board, through the department of regulatory agencies, has the~~
7 ~~authority to designate an administrative law judge to conduct hearings on~~
8 ~~any matter within the board's jurisdiction. Any designated administrative~~
9 ~~law judge shall have the powers and duties set forth in article 4 of title 24,~~
10 ~~€R.S., and shall be appointed pursuant to part 10 of article 30 of title 24,~~
11 ~~€R.S.~~

12 ~~(2) (1) Disciplinary proceedings may be commenced when the~~
13 ~~board has reasonable grounds to believe that a licensee under the board's~~
14 ~~jurisdiction has committed acts in violation of section 12-39-111~~
15 **12-265-113.**

16 ~~(3) (2) Disciplinary proceedings shall be conducted in the manner~~
17 ~~prescribed by SECTION 12-20-403 AND article 4 of title 24, €R.S., and the~~
18 ~~hearing and opportunity for review shall be conducted pursuant to said~~
19 ~~article THOSE LAWS by the board or an administrative law judge, at the~~
20 ~~board's discretion.~~

21 ~~(4) (3) No previously issued license to engage in the practice of~~
22 ~~nursing home administration shall be revoked or suspended until a~~
23 ~~hearing has been conducted pursuant to section 24-4-105, €R.S., or, for~~
24 ~~emergency situations, pursuant to section 24-4-104 (4). €R.S. The denial~~
25 ~~of an application to renew an existing license shall be treated in all~~
26 ~~respects as a revocation.~~

27 ~~(5) Any person participating in good faith in the making of a~~

1 ~~complaint or report or participating in any investigative or administrative~~
2 ~~proceeding pursuant to this article 265 shall be immune from any liability,~~
3 ~~civil or criminal, that otherwise might result by reason of such action.~~

4 (6) (4) (a) Complaints, investigations, hearings, meetings, or any
5 other proceedings of the board conducted pursuant to the provisions of
6 this article 39 265 and relating to disciplinary proceedings are exempt
7 from the provision of any law requiring that proceedings of the board be
8 conducted publicly or that the minutes or records of the board with
9 respect to action of the board taken pursuant to the provisions of this
10 article 39 265 be open to public inspection; except that this exemption
11 applies only when the board, or an administrative law judge acting on
12 behalf of the board, specifically determines that it is in the best interest of
13 a complainant or other recipient of services to keep ~~such~~ THE proceedings
14 or documents relating thereto closed to the public, or if the licensee is
15 violating section ~~12-39-111 (1)(g)~~ 12-265-113 (1)(g), participating in
16 good faith in a substance use disorder treatment program approved by the
17 board or designed by the board to end any addiction or dependency
18 specified in ~~said~~ THAT section, and the licensee has not violated any
19 provisions of the board order regarding participation in such a treatment
20 program. If the board determines that it is in the best interest of a
21 complainant or other recipient of services to keep ~~such~~ THE proceedings
22 or documents relating thereto closed to the public, then the final action of
23 the board is open to the public without disclosing the name of the client
24 or other recipient.

25 (b) SECTION 12-20-408 GOVERNS JUDICIAL REVIEW OF final board
26 actions and orders appropriate for judicial review. ~~may be judicially~~
27 ~~reviewed in the court of appeals in accordance with section 24-4-106~~

1 ~~(11).~~

2 ~~(7) When a complaint or investigation discloses an instance of~~
3 ~~conduct that does not warrant formal action by the board and, in the~~
4 ~~opinion of the board, the complaint should be dismissed, but the board~~
5 ~~has noticed indications of possible errant conduct by the licensee that~~
6 ~~could lead to serious consequences if not corrected~~ THE BOARD MAY SEND
7 a confidential letter of concern ~~may be issued and sent to the~~ A licensee
8 UNDER THE CIRCUMSTANCES SPECIFIED IN SECTION 12-20-404 (5).

9 ~~(8)~~ (5) All votes to impose discipline or dismiss a complaint must
10 be recorded in the board's publicly available minutes and indicate how
11 each board member voted on the question.

12 **12-265-117. [Formerly 12-39-115] Temporary advisory**
13 **committees - immunity.** (1) The board may appoint temporary advisory
14 committees, including temporary professional review committees, to
15 assist in the performance of its duties with respect to individual
16 investigations. Each temporary advisory committee shall consist of at
17 least three licensees who have expertise in the area under review.
18 Members of temporary advisory committees shall receive no
19 compensation for their services but shall be reimbursed for the actual and
20 necessary expenses incurred in the performance of their duties.

21 (2) If a professional review committee is established pursuant to
22 subsection (1) of this section to investigate the quality of care being given
23 by a person licensed pursuant to this article ~~such~~ **265**, THE committee
24 shall include in its membership at least three persons licensed in the same
25 category as the licensee under review, but ~~such~~ THE committee may be
26 authorized to act only by the board.

27 (3) IN ADDITION TO THE PERSONS SPECIFIED IN SECTION 12-20-402,

1 any member of ~~the board or~~ of a professional review committee, any
2 member of the ~~board's or~~ committee's staff, any person acting as a witness
3 or consultant to the ~~board or~~ committee, any witness testifying in a
4 proceeding authorized under this article ~~265~~, and any person who lodges
5 a complaint pursuant to this article ~~shall be immune from liability in any~~
6 ~~civil action brought against him or her for acts occurring while acting in~~
7 ~~his or her capacity as board or committee member, staff, consultant, or~~
8 ~~witness, respectively, if such individual was acting in good faith within~~
9 ~~the scope of his or her respective capacity, made a reasonable effort to~~
10 ~~obtain the facts of the matter as to which he or she acted, and acted in the~~
11 ~~reasonable belief that the action taken by him or her was warranted by the~~
12 ~~facts. Any person participating in good faith in lodging a complaint or~~
13 ~~participating in any investigative or administrative proceeding pursuant~~
14 ~~to this article shall be immune from any civil or criminal liability that may~~
15 ~~result from such participation~~ 265 IS GRANTED THE SAME IMMUNITY, AND
16 IS SUBJECT TO THE SAME CONDITIONS FOR IMMUNITY, AS SPECIFIED IN
17 SECTION 12-20-402.

18 **12-265-118. [Formerly 12-39-116] Unauthorized practice -**
19 **penalties.**

20 ~~(1) Repealed.~~

21 ~~(2) Any person who practices or offers or attempts to practice as~~
22 ~~a nursing home administrator without an active license issued under this~~
23 ~~article commits a class 2 misdemeanor and shall be punished as provided~~
24 ~~in section 18-1.3-501, C.R.S., for the first offense, and any person who~~
25 ~~commits a second or subsequent offense commits a class 6 felony and~~
26 ~~shall be punished as provided in section 18-1.3-401, C.R.S. 265 IS~~
27 SUBJECT TO PENALTIES PURSUANT TO SECTION 12-20-407 (1)(a).

1 **12-265-119. [Formerly 12-39-117] Cease-and-desist orders.**

2 ~~(1) (a) If it appears to the board, based upon credible evidence as~~
3 ~~presented in a written complaint by any person, that a licensee is acting~~
4 ~~in a manner that is an imminent threat to the health and safety of the~~
5 ~~public, or a person is acting or has acted without the required license, the~~
6 ~~board may issue an order to cease and desist such activity. The order shall~~
7 ~~set forth the statutes and rules alleged to have been violated, the facts~~
8 ~~alleged to have constituted the violation, and the requirement that all~~
9 ~~unlawful acts or unlicensed practices immediately cease.~~

10 ~~(b) Within ten days after service of the order to cease and desist~~
11 ~~pursuant to paragraph (a) of this subsection (1), the respondent may~~
12 ~~request a hearing on the question of whether acts or practices in violation~~
13 ~~of this article have occurred. Such hearing shall be conducted pursuant to~~
14 ~~sections 24-4-104 and 24-4-105, C.R.S.~~

15 ~~(2) (a) If it appears to the board, based upon credible evidence as~~
16 ~~presented in a written complaint by any person, that a person has violated~~
17 ~~any other portion of this article, then, in addition to any specific powers~~
18 ~~granted pursuant to this article, the board may issue to such person an~~
19 ~~order to show cause as to why the board should not issue a final order~~
20 ~~directing such person to cease and desist from the unlawful act or~~
21 ~~unlicensed practice.~~

22 ~~(b) A person against whom an order to show cause has been~~
23 ~~issued pursuant to paragraph (a) of this subsection (2) shall be promptly~~
24 ~~notified by the board of the issuance of the order, along with a copy of the~~
25 ~~order, the factual and legal basis for the order, and the date set by the~~
26 ~~board for a hearing on the order. Such notice may be served by personal~~
27 ~~service, by first-class United States mail, postage prepaid, or as may be~~

1 practicable upon any person against whom such order is issued. Personal
2 service or mailing of an order or document pursuant to this subsection (2)
3 shall constitute notice thereof to the person.

4 (c)(I) The hearing on an order to show cause shall be commenced
5 no sooner than ten and no later than forty-five calendar days after the date
6 of transmission or service of the notification by the board as provided in
7 paragraph (b) of this subsection (2). The hearing may be continued by
8 agreement of all parties based upon the complexity of the matter, number
9 of parties to the matter, and legal issues presented in the matter, but in no
10 event shall the hearing commence later than sixty calendar days after the
11 date of transmission or service of the notification.

12 (H) If a person against whom an order to show cause has been
13 issued pursuant to paragraph (a) of this subsection (2) does not appear at
14 the hearing, the board may present evidence that notification was properly
15 sent or served upon such person pursuant to paragraph (b) of this
16 subsection (2) and such other evidence related to the matter as the board
17 deems appropriate. The board shall issue the order within ten days after
18 the board's determination related to reasonable attempts to notify the
19 respondent, and the order shall become final as to that person by
20 operation of law. Such hearing shall be conducted pursuant to sections
21 24-4-104 and 24-4-105, C.R.S.

22 (HH) If the board reasonably finds that the person against whom
23 the order to show cause was issued is acting or has acted without the
24 required license, or has or is about to engage in acts or practices
25 constituting violations of this article, a final cease-and-desist order may
26 be issued, directing such person to cease and desist from further unlawful
27 acts or unlicensed practices.

1 ~~(IV) The board shall provide notice, in the manner set forth in~~
2 ~~paragraph (b) of this subsection (2), of the final cease-and-desist order~~
3 ~~within ten calendar days after the hearing conducted pursuant to this~~
4 ~~paragraph (c) to each person against whom such order has been issued.~~
5 ~~The final order issued pursuant to subparagraph (III) of this paragraph (c)~~
6 ~~shall be effective when issued and shall be a final order for purposes of~~
7 ~~judicial review.~~

8 ~~(3) If it appears to the board, based upon credible evidence~~
9 ~~presented to the board, that a person has engaged in or is about to engage~~
10 ~~in any unlicensed act or practice, any act or practice constituting a~~
11 ~~violation of this article, any rule promulgated pursuant to this article, any~~
12 ~~order issued pursuant to this article, or any act or practice constituting~~
13 ~~grounds for administrative sanction pursuant to this article, the board may~~
14 ~~enter into a stipulation with such person.~~

15 ~~(4) If any person fails to comply with a final cease-and-desist~~
16 ~~order or a stipulation, the board may request the attorney general or the~~
17 ~~district attorney for the judicial district in which the alleged violation~~
18 ~~exists to bring, and if so requested such attorney shall bring, suit for a~~
19 ~~temporary restraining order and for injunctive relief to prevent any further~~
20 ~~or continued violation of the final order.~~

21 ~~(5) A person aggrieved by the final cease-and-desist order may~~
22 ~~seek judicial review of the board's determination or of the board's final~~
23 ~~order as provided in section 12-39-114 (6).~~

24 THE BOARD MAY ISSUE CEASE-AND-DESIST ORDERS UNDER THE
25 CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROCEDURES SPECIFIED
26 IN SECTION 12-20-405.

27 **12-265-120. [Formerly 12-39-118] Injunctive proceedings.** The

1 board ~~in the name of the people of the state of Colorado,~~ may apply for
2 SEEK injunctive relief ~~through the attorney general or the district attorney~~
3 ~~in any court of competent jurisdiction~~ IN ACCORDANCE WITH SECTION
4 12-20-406, BUT ONLY to enjoin any person who does not possess a
5 currently valid or active nursing home administrator's license from
6 committing any act declared to be unlawful or prohibited by this article
7 **265.** In any action taken pursuant to this section, the court shall not
8 require the board ~~to plead or prove irreparable injury or inadequacy of a~~
9 ~~remedy at law or to post a bond. If it is established that the defendant has~~
10 ~~been or is committing an act declared to be unlawful or prohibited by this~~
11 ~~article, the court or any judge thereof shall enter a decree perpetually~~
12 ~~enjoining said defendant from further committing such act. In the case of~~
13 ~~a violation of any injunction issued under the provisions of this section,~~
14 ~~the court or any judge thereof may summarily try and punish the offender~~
15 ~~for contempt of court. Such injunctive proceedings shall be in addition to,~~
16 ~~and not in lieu of, all penalties and other remedies provided in this article.~~

17 **12-265-121. [Formerly 12-39-119] Administration of nursing**
18 **homes relying on treatment by spiritual means.** A person who serves
19 as an administrator of a nursing home conducted exclusively for persons
20 who rely upon treatment by spiritual means alone, through prayer in
21 accordance with the creed or tenets of a church or religious denomination,
22 shall be exempt from the provisions of this article **265.**

23 **12-265-122. [Formerly 12-39-120] Records.** The board shall keep
24 formal records of all complaints it receives and of the final disposition of
25 ~~such~~ THE complaints. The board shall be responsible for implementing a
26 tracking system to facilitate the retrieval of ~~such~~ THE records.

27 **12-265-123. [Formerly 12-39-121] Repeal of article. (†)** This

1 article 39 ~~265~~ is repealed, effective September 1, 2023.
2 (2) ~~Prior to~~ BEFORE the repeal, the licensing functions of the
3 board of ~~examiners of nursing home administrators~~ are scheduled for
4 review in accordance with section 24-34-104.

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